THE HONOUABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.3202 of 1995

Between:

L.Venkatappa Naidu. **.. PETITIONER**

AND

The Director of Sugar and Cane

Commissioner, and another.

.. RESPONDENTS

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ORDER:

In this writ petition, the petitioner seeks to have his case considered for appointment to the post of clerk, on non-seasonal basis, in any one of the existing vacancies in the respondent sugar factory.

Facts, to the extent necessary, are that the 2nd respondent had notified 135 posts to the Employment Exchange in the year 1991, despite which, it had not carried out the required selections. Petitioner would contend that the respondents were prolonging the selection process, for appointment to various posts on non-seasonal basis, and that he is fully qualified and eligible for being appointed to the post of a non-seasonal clerk. Petitioner would also contend that while he was denied absorption, several employees juniors to him, were appointed on non-seasonal basis.

A counter affidavit is filed by the second respondent. It is stated therein that

while the 2nd respondent had, issued a notification to the District Employment Exchange on 28-06-1991, the first respondent, vide proceedings, dated 13-05-1992, had directed the management not to act on the lapsed orders if the posts had not been filled up. As such, the selection was stopped and no recruitment was made. Respondents would deny the petitioner's contention that he is qualified to be appointed as a non-seasonal clerk, and would contend that there is no vacancy in the posts of permanent clerks in the cane accounts section, only seasonal clerk vacancies are available and that the petitioner is being continued as a seasonal clerk from 01-01-2000 onwards. The allegation that juniors were appointed as non-seasonal clerks is denied. It is stated that the respondents appointed one Sri P.Rajagopal on compassionate grounds, in compliance with the orders of this Court. Reference is made to the fact that Sri K.Jagannadha Reddy was appointed as clerk-cum-typist in the year 1982, in view of his possessing Typewriting qualification and the necessity of the respondents to have a clerk-cum-typist. It is stated that Sri S.Sadasivan was appointed as a technical person and one Sri B.N.Chandrasekhar was appointed as Fieldman. It is stated that there is no non-seasonal clerical post in the Department and as such, the question of denying a non-seasonal clerk post to the petitioner does not arise. It is also stated that the petitioner is a chronic litigant, who filed several writ petitions. Reference is made to W.P.No.6168 of 1992, C.C.No.227 of 1992, W.P.No.6140 of 1993 and W.P.No.3203 of 1995 in this regard.

In the additional counter affidavit it is stated that Sri K.Jagannadha Reddy was appointed as early as on 24-07-1982, whereas the petitioner was appointed in the year 1985. It is also stated that there is a ban of recruitment and that the Government had issued G.O.Ms.No.263, dated 05-11-2004, constituting a Committee for each Co-operative Sugar Factory for reducing and down sizing of employees for making Co-operative Sugar Factories viable.

Sri T.Balaji, learned counsel for the second respondent, would place before this Court the seniority list of clerical employees working on seasonal basis in the 2nd respondent-Sugar Factory. Learned counsel would submit that while the petitioner stands at Sl.No.4, there are three other clerks, seniors to him, who still continue to work on seasonal basis. Learned counsel would contend that since there are other employees, seniors to the petitioner, who are still continuing on a seasonal basis, it is not open to the petitioner to claim preference, over these three employees, and to be appointed as a non-seasonal clerk. Insofar not completing the selection process, for which notification was issued to the Employment Exchange, it is well settled that no employee can claim selection as a matter of right. It is open for the employer, for just and valid reasons, not to proceed with or finalise the selection process even after a notification is issued. It is the case of the respondents that the second respondent Sugar Factory is continuously facing losses and that its financial position is extremely weak. It cannot be said that the second respondent was not justified in deciding not to go ahead with the selection process for which a notification was issued earlier. In any event, mere issuance of notification does not entitle the petitioner to claim as a matter of right, that he should be appointed as a non-seasonal clerk since other three employees senior to him still continue to work on a seasonal basis. Petitioner's contention that employees, whose names he has furnished in his affidavit, are juniors to him is without basis. Sri T.Balaji, learned counsel, would contend that Sri K.Jagannadha Reddy, who was appointed as a clerk-cum-typist, was senior to the petitioner herein and that the other two employees Sri S.Sadasivan and Sri B.N.Chandrasekhar were appointed at the request of the first respondent on compassionate grounds. It is well settled that persons appointed on compassionate grounds form a distinct class and others, who do not belong to that group, cannot seek parity nor can they complain of discrimination. In any event, these employees are not even arraigned as respondents in the writ petition and in the absence of their being made a party in the

writ petition, the question of examining the correctness or otherwise of their appointment does not arise.

The writ petition as filed is wholly misconceived and is accordingly dismissed. No order as to costs.

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23-02-2006

Prv